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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: November 8, 2022)	Case No.: PSH-23-0023
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Issued: April 6, 2023

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires her to hold an access authorization. In May 2022, the Individual failed to report to an employer mandated breath alcohol test (BAT) in a timely fashion. Exhibit (Ex.) 1 at 1. She was subsequently asked by the Local Security Office (LSO) to undergo a series of Phosphatidylethanol (PEth) laboratory tests to detect recent alcohol consumption, which revealed overall test results that were consistent with "significant to heavy alcohol consumption." *Id.* at 2.

In August 2022, the Individual underwent a psychological evaluation by a DOE-consultant Psychologist (DOE Psychologist). Ex. 20. In completing her evaluation of the Individual, the DOE Psychologist conducted a clinical interview, spoke with two of the Individual's healthcare providers, reviewed the Individual's personnel security file, and had the Individual complete the Minnesota Multiphasic Personality Inventory-Second Edition along with a PEth laboratory test to detect recent alcohol consumption. *Id.* at 2.

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

On August 19, 2022, the DOE Psychologist issued a report (Report) explaining the results of the Individual's evaluation. *Id.* at 8. In the Report, the DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder. *Id.* at 7. The DOE Psychologist based this diagnosis on the Individual's self-acknowledged heavy drinking in 2021, her previous diagnosis of Alcohol Use Disorder, Mild, her May 2022 PEth results, and her inconsistent reports about her alcohol consumption. *Id.*

The DOE Psychologist recommended that the Individual complete the abbreviated Intensive Outpatient Program (IOP) that she was enrolled in at the time of the interview and continue with her aftercare plan. *Id.* at 7–8. Following the successful completion of the IOP, the DOE Psychologist indicated that the Individual should complete at least two months of “vigorous” therapy and attend Alcoholics Anonymous (AA) at least four times a week. *Id.* at 8. She also recommended that the Individual's AA attendance should be documented and that the Individual should work on the 12 steps with a sponsor. *Id.* Finally, the DOE Psychologist recommended ongoing monthly PEth tests. *Id.*

Due to the unresolved security concerns related to the Individual's lack of candor and alcohol consumption, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

In October 2022, the Individual requested an administrative hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on her own behalf and presented the testimony of her partner, her AA sponsor, her co-worker who attended the IOP with her, and her counselor. *See* Transcript of Hearing, Case No. PSH-23-0023 (hereinafter cited as “Tr.”). The Individual submitted 7 exhibits, marked as Exhibits A through G. Counsel for the DOE submitted 22 exhibits, marked as Exhibits 1 through 22, and presented the testimony of the DOE Psychologist.

II. The Summary of Security Concerns

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

Guideline E provides that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. A security concern may be raised under Guideline E when a person “[d]eliberately provid[es] false or misleading information; or conceal[s] or omit[s] information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making

a recommendation relevant to a national security eligibility determination, or other official government representative.” *Id.* at ¶ 16(b). In citing Guideline E, the LSO relied upon the DOE Psychologist’s conclusions regarding the Individual’s dishonesty about her alcohol consumption and the Individual’s failure to appear in a timely fashion for her BAT. Ex. 1 at 1.

Guideline G states that excessive alcohol consumption often leads to the exercise of questionable judgment, or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern under Guideline G include: “[a]lcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder”; “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder”; and a “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.” *Id.* at ¶ 22(a), (c), and (d). In citing Guideline G, the LSO relied upon the DOE Psychologist’s evaluation of the Individual and diagnosis of the Individual as suffering from Unspecified Alcohol-Related Disorder. Ex. 1 at 1–2. The LSO also relied upon the Individual’s positive result on random BAT testing in 2021 and her positive PEth tests in May and June 2022. *Id.* at 2.

Based on the conduct noted above, I find the LSO’s security concerns under Guideline E and Guideline G are justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

On May 19, 2021, the Individual completed a random BAT as part of her employer's Human Reliability Program (HRP). Ex. 17 at 5. Her initial test registered a BAC of 0.029, and the second test produced a BAC of 0.025. *Id.* The Individual was placed on administrative leave and was temporarily removed from the HRP. *Id.* at 1. The Individual was removed from administrative leave shortly after the incident but remained relieved of the HRP pending compliance with several medical recommendations, including unannounced BATs and a substance abuse evaluation. Ex. 14 at 1–3; Tr. at 64. The Individual completed an IOP in October 2021 as part of the requirements for her reinstatement into the HRP. Ex. 13 at 5; Tr. at 64. She was reinstated into HRP in January 2022. Tr. at 66.

In May 2022, the Individual failed to report for a follow-up BAT in a timely fashion. Ex. 9 at 4. That morning her supervisor reported hearing the Individual say “I don’t know if I can pass this” after she was notified about the BAT. *Id.* The Individual later that day completed a BAT that registered a 0.00 BAC, but she was asked to speak with a psychologist (Contractor Psychologist) employed by the contractor due to the delay and her supervisor’s report. Ex. 7 at 6. The Individual told the Contractor Psychologist that she was confused about the message she had received about the BAT because it was her understanding that she would no longer be required to do these tests now that her HRP was reinstated. *Id.*; Tr. at 66, 105. She also reported that she was delayed in arriving at the testing site because she could not leave her work area until other technicians had arrived. Ex. 7 at 6. The Individual stated that she told her manager she did not think she could pass the test because she was unsure if she could blow long enough due to her allergies. *Id.*; Ex. 20 at 3. The Individual told the Contractor Psychologist that she had not consumed alcohol since July 2021, but when asked to complete a PEth test to validate her statement, the Individual expressed concern about how far back a PEth test measures. Ex. 7 at 6. She then admitted to consuming two alcoholic beverages at a party in the middle of April. *Id.*

The PEth results came back indicating recent heavy consumption of alcohol, and the Individual was removed from the HRP. *Id.* The Individual began attending an IOP again and also began attending AA. *Id.* at 7. The Individual was asked to see the DOE Psychologist for an evaluation in August 2022. Ex. 20.

The Individual testified that she currently attends therapy once a week, aftercare once a week, and several AA meetings a week. Tr. at 72, 74–75, 88; Ex. D. She explained how each part of her treatment helps her in her recovery and stated that she feels she has benefited from all her recovery related activities. *Id.* at 72–90, 92. The Individual said that she does not intend to consume alcohol in the future, and she thinks that she has significant support to help her achieve that goal. *Id.* at 93.

The Individual explained that she did not remain abstinent from alcohol after completing her first IOP because she did not understand the effect that alcohol had on her body. *Id.* at 100. She regrets that she resumed her alcohol consumption after completing the IOP and explained that part of her motivation to maintain her sobriety comes from a desire to avoid similar regrets and disappointment in the future. *Id.* at 103. She now understands how her consumption of alcohol was harmful to her health and has found other activities to replace drinking, like AA, golfing, walking her dog, and spending time with family. *Id.* at 101.

After her two positive PEth tests in May 2022, the Individual underwent two more PEth tests in June 2022, which both came back positive but at a lower level than the May tests. Ex. B at 6–9. From July 2022 to February 2023, the Individual has undergone monthly PEth tests which have all come back negative for alcohol use. *Id.* at 10–17.

The Individual's partner, her AA sponsor, her coworker, with whom she attended her IOP, and her counselor all testified on the Individual's behalf. *Id.* at 9, 30, 49, 108. The Individual and her partner have been in a relationship since 2016. *Id.* at 9. They live as a married couple though they have not had a formal marriage. *Id.* The partner testified that the day of the May 2022 incident, the Individual immediately told him about the confusion about her BAT test and later explained that she was frustrated and upset later that day because she was unsure why she had been sent home. *Id.* at 10. The partner further testified that while the Individual was initially frustrated about having to return to the IOP, she eventually realized that continuing with the program and getting help for her issues with alcohol was beneficial to her. *Id.* at 11–12. He is supportive of her continued attendance at AA, aftercare, and counseling. *Id.* at 13–14. The partner testified that the Individual is happier and more easygoing now as compared to the time of the May 2022 incident. *Id.* at 15. He feels that the Individual's sobriety has caused them to focus on finding time to spend together and has improved their relationship. *Id.* at 16. The partner also testified that they do not keep alcohol in their home anymore, and he has not seen her consume alcohol since May 2022. *Id.* at 18–19.

The Individual's AA sponsor testified that she had met the Individual in July 2022 at an AA meeting. *Id.* at 30. She became the Individual's sponsor a "few months" prior to the hearing. *Id.* at 30–31. She also said that she was the Individual's second sponsor, but that switching sponsors sometimes happens in AA because "we ask people to sponsor us that sometimes we just don't jibe [sic], or what have you." *Id.* at 31. The sponsor testified that the Individual takes her work in AA "very seriously" and that she can see that the Individual's work in AA has changed her perspective. *Id.* at 38–40.

The Individual's coworker has known her for about six years and became closer with her when they were both in an IOP together beginning in August 2022. *Id.* at 50. The coworker testified that when she joined the IOP the Individual used her own experience to explain the process to the coworker and make her feel more comfortable in the IOP. *Id.* at 51. The coworker also said that even between August 2022 and the time of the hearing she had seen the Individual's attitude toward the IOP change from frustration to gratefulness. *Id.* at 53. She also testified that the Individual was an active and engaged participant in the IOP. *Id.* at 58.

The Individual's counselor is a licensed professional counselor and substance abuse professional who has known the Individual since she began her first IOP in 2021. *Id.* at 108–109. She explained that the second time the Individual began the IOP, she was more willing to ask how she could learn more and do better at changing her life. *Id.* at 110, 112. She also said that the Individual has learned in her treatment to be "painfully honest" and how to lean on the support system she has developed through aftercare and AA. *Id.* at 125. The counselor testified that the Individual is the hardest worker that she has seen in her five years as a substance abuse professional. *Id.* at 111. She also

stated that she believes that the Individual has a good prognosis with a “low” chance that she returns to consuming alcohol. *Id.* at 127.

The Individual also provided letters from three members of her AA group. Ex. A. In these letters the group members shared their view that the Individual is an eager and active member of the AA group and that she is making significant progress on her sobriety. *Id.* One letter came from the Individual’s first AA sponsor, who specifically mentioned the Individual’s dedication to working on her AA steps. *Id.* at 3.

The DOE Psychologist testified that in her view the Individual had “exceeded the evidence that was requested for demonstrating rehabilitation [and] reformation” from her maladaptive use of alcohol. *Id.* at 132–133. The DOE Psychologist also opined that based on the testimony she heard during the hearing, she believed that the Individual has made significant changes in her outlook on life, sobriety, and treatment since her initial treatment. *Id.* at 133–134.

V. Analysis

Due to the interrelated nature of the security concerns, I will address the Guideline G concerns before turning to my analysis of the Guideline E concerns.

A. Guideline G

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

The passage of less than one year since the Individual’s incident with the BAT and positive PEth tests is insufficient for me to conclude that the passage of time alone has mitigated the security concerns raised by the incident. *Id.* at ¶ 23(a). However, the Individual has acknowledged her

problematic alcohol consumption and has brought forth documentation and testimonial evidence establishing that she has taken significant steps to overcome her problem in line with treatment recommendations. She provided evidence through eight negative PEth tests and the testimony of her partner that she has not consumed alcohol since May 2022. Further, her co-worker and her aftercare counselor testified that she is regularly attending weekly aftercare meetings and going to weekly counseling sessions. Her sponsor and partner also testified that she is attending multiple AA meetings a week, which is confirmed by her AA sign-in sheets as Exhibit D. The DOE Psychologist opined that the Individual's efforts were sufficient to establish reformation. The aftercare counselor also testified that the Individual had a very good prognosis. For these reasons, I find that the Individual has satisfied the second and fourth mitigating condition under Guideline G. *Id.* at ¶ 23(b) and (d).

In light of the positive prognosis from the DOE Psychologist, the Individual's support network to aid her in her recovery, the Individual's abstinence from alcohol as evidenced by the PEth test results and her witnesses' testimony, and the Individual's positive participation in her treatment program and lifestyle changes, she has resolved the security concerns related to her maladaptive pattern of alcohol use, and I feel confident she is unlikely to engage in problematic alcohol consumption in the future. For the reasons stated above, I find that the Individual has mitigated the security concerns raised by the LSO under Guideline G.

B. Guideline E

A condition that can mitigate Guideline E concerns is that the "individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur[.]" *Id.* at ¶ 17(d). I find that the LSO's Guideline E concerns are inextricably tied to the Individual's problematic alcohol consumption, and because she has resolved those issues, she is unlikely to have similar issues of judgment and honesty in the future. The Individual has acknowledged that both her behavior and alcohol use were harmful. She attends weekly counseling sessions, completed a second IOP, continues in aftercare, and regularly attends AA meetings, including working with a sponsor. Her counselor testified that the Individual is a more honest and open person that now knows how to use her support network. The DOE Psychologist stated that from her observation of the hearing, the Individual had overcome any issues with defensiveness or denial she had shown previously. For these reasons, I find that the Individual has mitigated the Guideline E concern.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I find the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the

Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals